



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201244023

AUG 09 2012

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend

Taxpayer A:

Amount M:

Amount N:

Financial Institution P:

Financial Advisor K:

CPA Firm T:

IRA A:

Bank R:

Dear

This is in response to your request dated May 13, 2011, as supplemented by correspondence dated November 15, 2011, January 6, 2012, and July 16, 2012, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A maintained an Individual Retirement Annuity (IRA), IRA A, with Financial Institution P. Taxpayer A asserts that, on May 14, 2010, he received a distribution of Amount M from IRA A. Taxpayer A asserts that his failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to the failures of Financial Advisor K and Taxpayer A's tax advisor, CPA Firm T, to inform Taxpayer A that the annuity, IRA A, was an IRA account.

In year 1999, Taxpayer A relied on Financial Advisor K to handle the movement of funds out of his 401(k) plan. Taxpayer A and his spouse had a long-standing relationship with Financial Advisor K. The advisor provided guidance for their retirement accounts and all other investments. Taxpayer A and his spouse relied upon the advice and guidance of their advisor for the financial decisions for the family since their knowledge of investments and tax treatments of their investments is limited.

Financial Advisor K convinced Taxpayer A that an investment with the predecessor to Financial Institution P was the best option. Financial Advisor K completed all the forms necessary for the rollover of Amount N from Taxpayer A's 401(k) plan to IRA A and on July 19, 1999, Amount N was rolled over into IRA A.

Ten years later, Taxpayer A received a letter from Financial Institution P stating that his annuity had not met the Target Value, and Financial Institution P offered to begin making annuity payments. Taxpayer A contacted Financial Advisor K for help and Financial Advisor K stated that he had left Financial Institution P several years before, and apologized to Taxpayer A for not letting him know. Financial Advisor K had never informed Taxpayer A that IRA A was an IRA annuity. The account value of IRA A had decreased to Amount M. Taxpayer A asserts that after Financial Advisor K left Financial Institution P they did not provide Taxpayer A with anyone to assist him with his ongoing financial needs.

By that time, Taxpayer A represents that he had begun working with an online trading account for a couple of years and had done fairly well. Taxpayer A felt that he could do better with his own funds than paying someone else to lose money for him. Taxpayer A asked his accountant at CPA Firm T whether if he withdrew the funds from IRA A that had lost money, he would run into any problems and did not know nor did he describe the annuity as an IRA. Taxpayer A's accountant at CPA Firm T did not ask to see a copy of the annuity before issuing the general tax advice concerning liquidation of a nonqualified annuity that had lost value.

The purpose of withdrawing the funds on May 14, 2010, was to prevent a further decrease in value of the annuity. IRA A was continually decreasing in value and Taxpayer A realized he was being charged high annual fees and wanted to withdraw the funds to appropriately invest the funds elsewhere. Taxpayer A was

unaware that the annuity was within an IRA and that the tax treatment of the transaction is different than that of an annuity outside an IRA.

Taxpayer A sent a request form to Financial Institution P on May 8, 2010 with the intention to withdraw the funds from IRA A. Taxpayer A received the distribution from IRA A in Amount M on May 17, 2010, and deposited Amount M into his joint checking account with his spouse through Bank R on May 21, 2010. Taxpayer A asserts that he was unaware that the funds were within an IRA at the time of the withdrawal on May 14, 2010 and thought he was taking a distribution from a regular annuity account at Financial Institution P.

Taxpayer A has provided a copy of the Annuity Withdrawal Request Form issued to him from Financial Institution P for Annuity A which shows no mention of the term IRA but reads: "This form can be used for Deferred or Immediate Annuities. For 403(b) or ORP withdrawals, the 403(b) Tax Sheltered Annuity or ORP form MUST be used."

Taxpayer A asserts that he read these statements, did not understand them, and took the word of his accountant at CPA Firm T that he would not be charged a penalty and requested closure of the account. After Taxpayer A, acting on his own, communicated his desire to withdraw IRA A funds, Financial institution P did not initiate a call to assist Taxpayer A with this annuity or discuss a successor to Financial Advisor K, who had abandoned Taxpayer A after having established IRA A on behalf of Taxpayer A. Taxpayer A, was never assigned a specific advisor and, as a result, never received any advice or guidance on his annuity after Financial Advisor K left.

On March 23, 2011, Taxpayer A and his spouse spoke with their accountant at CPA Firm T about their tax return and for the first time they were informed that Amount M was an IRA distribution and that the 60-day rollover rule applied. Taxpayer A never rolled over any portion of the distribution into an IRA or other qualified plan and the 60-day rollover period had expired. Taxpayer A's original intent was to defer the payment of taxes on the IRA A investment.

In a letter dated July 16, 2012, CPA Firm T stated they had a close working relationship with Taxpayer A and have provided tax and financial advice for many years which Taxpayer A relied upon. They also stated that they never asked, but should have asked, to see a copy of the annuity statement to ensure that it was a nonqualified annuity before issuing their advice to Taxpayer A. CPA Firm T did not realize that the annuity was held within an IRA until Taxpayer A received a Form 1099-R in January of 2011 for the distribution.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount M.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a rollover of Amount M within the 60 day period prescribed by section 408(d)(3) of the Code was due to the failures of Financial Advisor K and Taxpayer A's tax advisor, CPA Firm T, to inform Taxpayer A that the annuity, IRA A, was an IRA account.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution to Taxpayer A of Amount M, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of Amount M to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

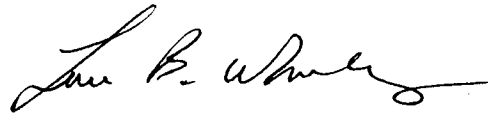
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions, please contact

Sincerely yours,

A handwritten signature in black ink, appearing to read "Laura B. Warshawsky". The signature is fluid and cursive, with a long horizontal stroke at the end.

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc